

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
SCS FLOORING CO.	NO. 2011-AQ- 17

TO: SCS Flooring Co.
Bruce L. Brown, Registered Agent
3314 Highway 6
Homestead, Iowa 52236

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and SCS Flooring Co. (SCS Flooring) for the purpose of resolving violations pertaining to open burning of trade waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Aaron Pickens
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code

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chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. SCS Flooring specializes in epoxy coatings for concrete floors. The business is located at 3314 Highway 6, Homestead, Iowa. The owner also resides at this address.

2. On March 18, 2010, Jon Ryk, Environmental Specialist with DNR Field Office 6, received a complaint regarding open burning occurring on the south side of Highway 6 approximately one mile west of Blackhawk Road. The complainant indicated that thick black smoke was observed emitting from the area. The complainant also had contacted the Iowa County Sheriff's Office.

3. On March 18, 2010, Mr. Ryk contacted Officer Doug VanBennekorn of the Iowa County Sheriff's Office. Officer VanBennekorn had responded to the March 18 open burning incident. Officer VanBennekorn provided Mr. Ryk with information and photographs documenting the open burning of trade waste from the SCS Flooring business.

4. On March 19, 2010, Aaron Pickens, environmental specialist with DNR Field Office 6, contacted Iowa County Sanitarian Rick Heller regarding the March 18 open burning incident, as Mr. Heller's office is located close to the SCS Flooring site. Mr. Heller stated that he saw burning occurring on March 18, and that he, as well as the complainant, had contacted the Iowa County Sheriff's Office.

5. Also on March 19, 2010, Mr. Pickens investigated the complaint. Mr. Pickens observed an area used for open burning at the site. Mr. Pickens observed two burn piles that contained mostly burned steel five-gallon buckets. He also observed a pile of several pallets. While at the site, Mr. Pickens spoke with SCS Flooring owner Bruce Brown. Mr. Brown admitted to periodically burning steel and plastic buckets containing waste material generated from the operation of his business. According to Mr. Brown, the buckets of waste material contain small amounts of residual epoxy compounds and therefore may not be disposed of in the garbage. Mr. Brown said that a waste hauler comes weekly to the SCS Flooring facility to collect garbage, and that the waste hauler does not take the buckets due to the epoxy in them. Mr. Pickens took photographs at the site, documenting open burning violations.

6. A March 25, 2010, Notice of Violation (NOV) letter was issued by DNR Field Office 6 to SCS Flooring, citing the violation of illegal open burning. The NOV

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letter referred Mr. Brown to the Iowa Waste Reduction Center, which provides assistance to small businesses dealing with disposal of trade-related waste. The letter directed SCS Flooring to properly dispose of the waste from the site and to provide disposal receipts to DNR Field Office 6 by April 29, 2010.

7. On March 30, 2010, Mr. Brown contacted Mr. Pickens with questions regarding whether pallets, paper and cardboard from the business may be open burned. Mr. Pickens informed Mr. Brown that those items are considered trade waste and may not be burned. Mr. Pickens reviewed with Mr. Brown the DNR's rules prohibiting open burning. Mr. Pickens also informed Mr. Brown that pallets, paper and cardboard are locally recyclable and may be taken to a collection center for recycling.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of trade waste at SCS Flooring demonstrates violations of this provision.

V. ORDER

THEREFORE, DNR orders and SCS Flooring agrees to the following:

1. SCS Flooring shall pay a penalty of \$1,500.00 within 45 days of the date this order is signed by the Director;

2. To ensure that open burning does not occur in the future, SCS Flooring shall develop a solid waste management plan and shall submit the plan to DNR Field Office 6 within 45 days of the date this order is signed by the Director; and

3. SCS Flooring shall immediately discontinue improper improper open burning of solid waste, including trade waste, and other materials at any location in the State of Iowa; and SCS Flooring shall comply in the future with all state and local requirements regarding the prohibition against illegal open burning

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VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,500.00 is assessed by this administrative consent order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – SCS Flooring has achieved an economic benefit from the open burning of trade waste. Improperly open burning has allowed SCS Flooring to avoid the costs associated with disposal of possibly hazardous materials, which can be expensive. Therefore, a penalty of \$1,000.00 is assessed for economic benefit.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Additionally, tax dollars were expended to investigate, document, and respond to this violation. Therefore, a penalty of \$300.00 is assessed for the gravity of the violations.

Culpability – As a business dealing with potentially hazardous materials, SCS Flooring and its owner, Bruce Brown, have a duty to remain knowledgeable of DNR's rules and to properly dispose of all trade waste. Therefore, a penalty of \$200.00 is assessed for culpability.

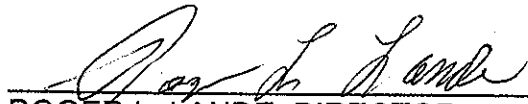
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of SCS Flooring. For that reason, SCS Flooring waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 8th day of
April, 2011



AUTHORIZED AGENT
SCS Flooring Co

Dated this 18th day of
April, 2011

Iowa County Air Quality file; Anne Preziosi; DNR Field Office 6; VII.C.2